

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>BILLY JOHN ROBERSON, 1385227,</b>	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>No. 3:08-CV-509-P</b>
	)	<b>ECF</b>
<b>NATHANIEL QUARTERMAN, Director</b>	)	
<b>TDCJ-CID,</b>	)	
<b>Respondent.</b>	)	

**RECOMMENDATION ON CERTIFICATE AS TO APPEALABILITY**

Petitioner filed a motion to proceed *in forma pauperis*. The Court finds the motion reflects an intent to appeal and liberally construes the motion as a notice of appeal in the above captioned action in which:

- ☒ the District Court has entered a final order in a habeas corpus proceeding brought pursuant to 28 U.S.C. § 2254 dismissing the petition as a second or subsequent habeas petition pursuant to 28 U.S.C. § 2244.
- ☐ the District Court has entered a final order in a proceeding pursuant to 28 U.S.C. § 2255.

Pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253(c), the undersigned Magistrate Judge finds and recommends as follows:

**IFP STATUS:**

- ☒ the party appealing should be GRANTED leave to proceed *in forma pauperis*.
- ☐ the party appealing should be DENIED leave to proceed *in forma pauperis* for the following reason(s):
  - ☐ the Court recommends that the District Court certify, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915(a)(3), that the appeal is not taken in good faith;
  - ☐ the person appealing is not a pauper;
  - ☐ the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and/or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on \_\_\_\_\_).

**COA:**

- ☐ a Certificate of Appealability should be GRANTED. (See issues set forth below).
- ☒ a Certificate of Appealability should be DENIED. (See reasons stated below).

**REASONS FOR DENIAL:** For the reasons stated in the Findings, Conclusions and Recommendation of the United States Magistrate Judge, filed on May 27, 2008, and as adopted by the District Court on July 20, 2008, Petitioner has filed a second or subsequent habeas petition which should be transferred. See 28 U.S.C. §2244.

**DATE:** August 11, 2008

  
**PAUL D. STICKNEY**  
**UNITED STATES MAGISTRATE JUDGE**